

Compass Development, Inc. and/or Compass Development, Inc., Debtor in Possession and Oil, Chemical and Atomic Workers International Union, AFL-CIO. Case 6-CA-15143

November 19, 1982

DECISION AND ORDER

**BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND HUNTER**

Upon a charge filed on December 7, 1981, by Oil, Chemical and Atomic Workers International Union, AFL-CIO, herein called the Union, and duly served on Compass Development, Inc., herein called Respondent; an amended charge filed on January 4, 1982, by the Union and duly served on Respondent; and a second amended charge filed on February 16, 1982, and duly served on Respondent and on Compass Development, Inc., Debtor in Possession, herein also called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 6, issued a complaint on February 22, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On April 1, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on April 27, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and therefore the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in

the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof, "all the allegations in the Complaint shall be deemed to be admitted to be true and may be found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, the Acting Regional Attorney for Region 6, by letter dated March 9, 1982, advised Respondent that it had failed to file an answer to the complaint and that, unless an answer was received, summary judgment would be sought. As noted above, Respondent has failed to file an answer to the complaint and has failed to file a response to the Notice To Show Cause.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the complaint are deemed admitted and are found to be true, and we shall grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a Pennsylvania corporation with an office and place of business in West Hickory, Pennsylvania, where it has been engaged in the production and nonretail sale of oil and related products. During the 12-month period ending September 30, 1981, Respondent, in the course and conduct of its business operations, purchased and received at its West Hickory, Pennsylvania, facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

Since on or about December 24, 1981, Compass Development, Inc., Debtor in Possession, has been duly designated by the United States Bankruptcy Court for the District of New Jersey as the debtor in possession with full authority to continue operation and exercise all powers necessary to the ad-

ministration of the business of Compass Development, Inc.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Oil, Chemical and Atomic Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The 8(a)(3) and (1) Violations*

On or about November 19, 1981, Respondent laid off and on or about November 23, 1981, Respondent discharged its employees Terry L. Bean, Michael E. Bowen, Mark A. DeVore, Robert J. Duncan, William J. Forbes, Charles J. Foster, Maurice J. McBride, John R. Rowe, and Patrick G. Yerskey. Respondent engaged in the aforesaid conduct because the above-named employees joined, supported, or assisted the Union and engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection.

Accordingly, we find that, by the aforesaid conduct, Respondent discriminated in regard to the terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and that by such conduct Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

B. *Independent 8(a)(1) Violations*

On or about September 1, 1981, Respondent, acting through its assistant foreman and supervisor, Richard Burrows, interrogated its employees regarding their union membership, activities, and sympathies and the union membership, activities, and sympathies of their fellow employees.

On or about October 1, 1981, Respondent, acting through its foreman and supervisor, Richard Rice, threatened its employees with more onerous working conditions if they selected the Union as their collective-bargaining representative.

On or about November 3, 1981, Respondent, acting through its foreman and supervisor, Paul Greathouse, threatened its employees with subcontracting of work and layoffs if they selected the Union as the collective-bargaining representative.

Accordingly, we find that, by the aforesaid conduct, Respondent has interfered with, restrained,

and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act, and by such conduct Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, we shall order that it cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act.

We have found that Respondent discriminated against those employees named in section III, A, above, by laying them off on or about November 19, 1981, and by discharging them on or about November 23, 1981. Accordingly, we shall order that they be offered immediate and full reinstatement to their former jobs or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed. We also shall order that Respondent make these employees whole for any loss of pay they may have suffered because of the discrimination against them, to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as set forth in *Florida Steel Corporation*, 231 NLRB 117 (1977).¹ We also shall order that Respondent expunge from its files any reference to the unlawful layoffs of these employees on or about November 19, 1981, and to their unlawful discharges on or about November 23, 1981, and notify them that this has been done and that evidence of Respondent's unlawful conduct will not be used as a basis for future personnel actions against them.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Compass Development, Inc. and/or Compass Development, Inc., Debtor in Possession, is an em-

¹ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

ployer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Oil, Chemical and Atomic Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By the acts described in section III, A, above, Respondent has discriminated in regard to hire and tenure of employment of its employees, thereby discouraging membership in or activities on behalf of a labor organization, and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

4. By the acts described in section III, B, above, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Compass Development, Inc. and/or Compass Development, Inc., Debtor in Possession, West Hickory, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Laying off and discharging its employees, or otherwise discriminating against them, because they joined, supported, or assisted the Oil, Chemical and Atomic Workers International Union, AFL-CIO, or any other labor organization, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) Interrogating employees about their union membership, activities, and sympathies or the union membership, activities, and sympathies of other employees.

(c) Threatening employees with more onerous working conditions if they selected the Union, or any other labor organization, as their collective-bargaining representative.

(d) Threatening employees with subcontracting of work and layoffs if they select the Union, or any other labor organization, as their collective-bargaining representative.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer immediate and full reinstatement to employees Terry L. Bean, Michael E. Bowen, Mark A. DeVore, Robert J. Duncan, William J. Forbes, Charles J. Foster, Maurice J. McBride, John R. Rowe, and Patrick G. Yerskey to their former jobs or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any losses they may have suffered by reason of the discrimination against them as set forth in the section of this Decision entitled "The Remedy."

(b) Expunge from its files any reference to the unlawful layoffs of the above-named employees on November 19, 1981, and to their unlawful discharges on November 23, 1981, and notify them in writing that this has been done and that evidence of Respondent's unlawful conduct will not be used as a basis for future personnel actions against them.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay which may be due under the terms of this Order.

(d) Post at its West Hickory, Pennsylvania, facility copies of the attached notice marked "Appendix."² Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT lay off or discharge employees because they join, support, or assist Oil, Chemical and Atomic Workers International Union, AFL-CIO, or any other labor organization, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT interrogate employees about their union membership, activities, and sympathies or the union membership, activities, and sympathies of other employees.

WE WILL NOT threaten our employees with more onerous working conditions if they select the Union, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT threaten our employees with subcontracting of work and layoffs if they select the Union, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employ-

ees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer to Terry L. Bean, Michael E. Bowen, Mark A. DeVore, Robert J. Duncan, William J. Forbes, Charles J. Foster, Maurice J. McBride, John R. Rowe, and Patrick G. Yerskey immediate and full reinstatement to their former jobs or, if their former positions no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of pay they may have suffered by reason of the discrimination against them, with interest.

WE WILL expunge from our files any reference to the layoffs on November 19, 1981, and the discharges on November 23, 1981, of the above-named employees, and WE WILL notify them that this has been done and that evidence of this unlawful conduct will not be used as a basis for future personnel actions against them.

COMPASS DEVELOPMENT, INC. AND/-
OR COMPASS DEVELOPMENT, INC.,
DEBTOR IN POSSESSION